



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ABANTE ROOTER AND PLUMBING,
INC., individually and on behalf of all others
similarly situated,

Plaintiff,

-against-

NEW YORK LIFE INSURANCE
COMPANY,

Defendant.

No. 16-cv-03588 (BCM)

**ORDER GRANTING MOTION TO
REMEDY ERROR IN CLASS
ADMINISTRATION**

BARBARA MOSES, United States Magistrate Judge.

By Order dated May 18, 2017 (Dkt. No. 31), this Court granted in part Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement (Dkt. No. 26). By Order dated May 30, 2017 (Dkt. No. 33), this Court approved plaintiff's proposed Notice Plan and scheduled a Final Approval Hearing on the settlement for September 20, 2017. Thereafter, the Settlement Administrator, Kurtzman Carson Consultants, proceeded to send out notice to the Class. In response, 653 Class Members filed valid claims. No Class Members filed objections,¹ and no Class Members opted out of the settlement. *See* Decl. of Steven Powell filed Sept. 5, 2017 (Dkt. No. 41), ¶ 15.

The Notice Plan under the Settlement Agreement included both a postcard claim form *and* a long form letter notice, and required the Settlement Administrator to mail the long form letter notice to Class Members and post it on a website maintained by the Settlement Administrator. *See* Sett. Ag. (Dkt. No. 25-1) §§ 1.11-1.13 & § 4.2; *id.* Ex. 2 (postcard claim

¹ The sole objection was filed by a consumer who was not a class member. Powell Decl. ¶ 18.

form); *id.* Ex. 3 (long form letter notice); May 30 Order at 2 n.1. However, the Settlement Administrator only mailed the postcard claim form. *See* Powell Decl. ¶¶ 10-12 & Ex. C; Supplemental Decl. of Steven Powell filed Oct. 2, 2017 (Dkt. No. 46), ¶ 5. The postcard claim form directed Class Members to the website, on which was posted the long form letter notice. As of August 30, 2017, 4,010 people had accessed that website. *See* Powell Decl. ¶ 13. However, the Settlement Administrator did not send the long form letter notice directly to Class Members as required.

On September 20, 2017, the parties appeared before the Court for the Final Approval Hearing, during the course of which the Court brought to counsel's attention the fact that the long form letter notice had not been mailed to Class Members as ordered. In response, Class Counsel proposed to submit a plan, within two weeks, to remediate the notice error.

On October 2, 2017, Class Counsel filed Plaintiff's Unopposed Motion to Remedy Error in Class Administration (Dkt. No. 45) and proposed a remediation plan to provide a second round of notice to the Class, consisting of both the postcard claim form and the long form letter notice, and to provide Class Members with a second opportunity to file claims, to object, or to opt out of the Settlement. Unopp. Mtn. to Remedy, at 3-4; Supp. Powell Decl. ¶¶ 8-9. The Settlement Administrator will assume responsibility for the costs of the second round of notice. Supp. Powell Decl. ¶ 10.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court approves the proposed remediation plan of Class Counsel and of the Settlement Administrator and GRANTS Plaintiff's Unopposed Motion to Remedy Error.
2. The Court hereby orders the Settlement Administrator to mail both the postcard claim form and the long form letter notice to all Class Members who were successfully identified

by the Settlement Administrator during the initial notice efforts. The Settlement Administrator shall cause such notice to be completed on or before **November 3, 2017**.

3. The Settlement Administrator will continue to maintain a website to which Class Members will be directed to obtain more information about the proposed settlement.

4. Class Members will have sixty days from the date of the deadline for mailing notice, that is, until **January 2, 2018**, to file a claim or an objection or to opt out of the proposed settlement.

5. Class Members who previously filed a claim will be informed that they do not need to file a second claim.

6. The Final Approval Hearing will be continued, before the undersigned Magistrate Judge, **at 10:00 a.m. on February 16, 2018**, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007. The postcard claim form and the long form letter notice will inform Class Members of the date, time and location of the continued hearing.

7. Ten days before the continued Final Approval Hearing (that is, no later than **February 6, 2018**), the Settlement Administrator shall submit a declaration attesting to compliance with this Order.

8. Ten days before the continued Final Approval Hearing (that is, no later than **February 6, 2018**), plaintiff's counsel are to submit any additional filings in support of final approval of the settlement (and in response to objections, if any).

9. For clarity, the parties' deadlines are as follows:

Class Notice Completed: **November 3, 2017**

Objection/Exclusion Deadline: **January 2, 2018**

Claim Deadline: January 2, 2018
Declaration of Administrator: February 6, 2018
Final Approval Submissions: February 6, 2018
Continued Final Approval Hearing: February 16, 2018, 10:00 a.m.

10. Plaintiff's motion to file a proposed Amended Final Approval Order and Judgement (Dkt. No. 44) is GRANTED and the proposed amended order is deemed filed.

11. The Clerk of the Court is respectfully requested to close the motions at Dkt. Nos. 44 and 45.

Dated: New York, New York
October 20, 2017

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge